IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATE ROBINSON, JOANNE PIPES-PURIEFOY AND SUZANNE BROZOSKIE	:	**CIVIL ACTION**
v.	:	
COMPUTER LEARNING CENTERS, a/k/a CLC, INC.	:	**NO. 99-3904**

M E M O R A N D U M

WALDMAN, J. **October 12, 1999**

Plaintiffs Nate Robinson, Joanne Pipes-Puriefoy and Suzanne Brozoskie filed a class action Complaint in the Court of Common Pleas of Philadelphia County against defendant Computer Learning Centers, Inc. ("CLC") on behalf of themselves and the "hundreds" of other students enrolled at the CLC facility in West Philadelphia from 1995 to 1999 who failed to obtain computer-related jobs through CLC's placement service. Plaintiffs assert claims for breach of contract, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), fraud, negligent misrepresentation, negligence and unjust enrichment.

CLC owns and operates schools which offer diplomas to adults seeking entry-level jobs in computer-related fields. Plaintiffs and the putative class members enrolled at CLC's 3600 Market Street location and paid tuition and other sums for educational programs, materials, equipment and services.

The gravamen of the Complaint is that CLC made material misrepresentations and omissions to secure plaintiffs' enrollment and obtained money from them for which it failed to provide promised benefits. Plaintiffs seek damages in the amount of the sums paid for their tuition and fees, supplies, books and "any interest on any loans" obtained by any class member to pay defendant's tuition and fees. Plaintiffs also seek punitive damages and attorney's fees.[1]

CLC removed the case to this court on the basis of original diversity jurisdiction. Presently before the court is plaintiffs' Motion to Remand.

As the party seeking to establish jurisdiction, defendant bears the burden of proving that there is complete diversity between the respective parties and that the amount in controversy exceeds $75,000, exclusive of interest and costs. See 28 U.S.C. §1332(a); Russ v. State Farm Mut. Auto. Ins. Co., 961 F. Supp. 808, 810 (E.D. Pa. 1997); Neff v. General Motors Corp., 163 F.R.D. 478, 480 (E.D. Pa. 1995). The removal statute is strictly construed to honor the congressional intent to restrict diversity litigation in the federal courts. See Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217

[1]CLC has asserted counterclaims for amounts allegedly owed by plaintiffs for materials and services. CLC does not contend that there is any independent jurisdictional basis for these counterclaims.

(3d Cir. 1999); Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1044-45 (3d Cir. 1993). All doubts as to the existence of federal jurisdiction must be resolved in favor of remand. Id. at 1045; Neff, 163 F.R.D. at 481; Johnson v. Costco Wholesale, 1999 WL 740690, *1 (E.D. Pa. Sept. 22, 1999).

The parties do not dispute their diversity of citizenship. The issue is whether the amount in controversy exceeds $75,000. If the claims of the named plaintiffs do not satisfy the amount in controversy requirement, the court lacks subject matter jurisdiction over a putative class action. See Sanderson, Thompson, Ratledge & Simny v. AWACS, Inc., 958 F. Supp. 947, 961-62 & n.6 (D. Del. 1997).

In calculating the amount in controversy in class actions, class plaintiffs' claims cannot be aggregated to meet the jurisdictional amount. See Meritcare, 166 F.3d at 218; Packard, 994 F.2d at 1045; Pierson v. Source Perrier, S.A., 848 F. Supp. 1186, 1188 (E.D. Pa. 1994).[2] Each class member must satisfy the jurisdictional prerequisite. Zahn v. Int'l Paper Co., 414 U.S. 291, 301 (1973); Meritcare, 166 F.3d at 218; Packard, 994 F.2d at 1045; Pierson, 848 F. Supp. at 1188. In determining the amount in controversy, attorney's fees and

[2]Putative class actions, prior to certification, are treated as class actions for jurisdictional purposes. See Packard, 994 F.2d at 1043 n.2; Garcia v. General Motors Corp., 910 F. Supp. 160, 163-64 (D.N.J. 1995).

punitive damages must be distributed pro rata to all class members. See Johnson v. Gerber Prods. Co., 949 F. Supp. 327, 329-30 (E.D. Pa. 1996)(attorneys' fees may not be aggregated in class actions); Pierson, 848 F. Supp. at 1189 (punitive damages cannot be aggregated); McNamara v. Philip Morris Cos., Inc., 1999 WL 554592, *2 (E.D. Pa. July 7, 1999)(attorneys' fees must be distributed to all class members on pro rata basis); Floyd v. Liberty Mutual Fire Ins., 1996 WL 102322, *2 (E.D. Pa. March 5, 1996)(neither attorneys' fees nor punitive damages may be aggregated to satisfy jurisdictional amount).

The Court determines the amount in controversy from the complaint itself. See Angus v. Shiley, Inc., 989 F.2d 142, 145-46 (3d Cir. 1993). Plaintiffs have presented a combination of liquidated claims, which clearly do not meet the jurisdictional requirement, and open-ended unliquidated claims. When not specified, the amount in controversy in an unliquidated claim is measured by a reasonable reading of the value of the rights being litigated. Id. at 146. The removing defendant must show the value of the rights being litigated, including that of any punitive damages claim. McFadden v. State Farm Ins. Co., 1999 WL 715162, *4 (E.D. Pa. Sept. 13, 1999).[3]

[3]Courts have variously applied a preponderance of the evidence standard and a more stringent legal certainty or reasonable probability standard in assessing whether a removing defendant has shown the requisite amount in controversy in a removed action in which precise damages have not been alleged. See International Fleet Auto Sales, Inc. v. National Auto Credit, 1999 WL 95258, *4 n.7 (E.D. Pa. Feb. 22, 1999). The resolution of plaintiffs' motion would be the same under each standard.

Plaintiffs have alleged specific actual damages in the amount of $8,800 for each of two named plaintiffs and $16,500 for the other named plaintiff, as well as unspecified sums for supplies and books.[4] Under the UTPCPL, a court may award up to three times a plaintiff's actual damages. See 73 Pa. Cons. Stat. Ann. §201-9.2(a).[5] Assuming the plaintiff claiming the greatest loss were to receive treble damages, each class member's pro rata share of attorneys' fees and additional punitive damages would have to exceed $25,000 to satisfy the jurisdictional requirement. Even assuming one hundred rather than the estimated "hundreds" of class members, this would require an award of additional punitive damages and attorney fees exceeding $2.5 million. See Garcia, 910 F. Supp. at 166 (estimating punitive damage and attorney fee award necessary to satisfy jurisdictional amount when allocated among numerous class members in consumer fraud action); Amundson & Assoc. Art Studio v. Nat. Council on Comp. Ins., 977 F. Supp. 1116, 1127 (D. Kan. 1997) (undertaking similar estimate of total

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[4]If the cost of the required books and supplies were appreciable, one must assume that defendant would have presented evidence of such in resisting the motion to remand. In any event, even assuming these materials cost several thousand dollars, this would not materially affect the court's assessment.

[5]All of plaintiffs' claims are predicated on the same conduct. They essentially seek variously to recover all or some of their losses arising from that conduct under different theories, as well as punitive damages and attorney fees where permitted. It is doubtful that a court in these circumstances would impose treble damages on top of an award of punitive damages. See Neff, 163 F.R.D. at 482 & n.6. Nevertheless, the court has assumed such a possibility in assessing plaintiffs' claims.

punitive damages necessary to satisfy jurisdictional amount when apportioned to each class member). Defendant has made no showing from which the court conscientiously could conclude that such a result is likely or even realistically possible.[6]

Under any appropriate standard, defendant has failed to establish removal jurisdiction. Accordingly, plaintiffs' motion will be granted.

Plaintiffs also request costs and attorney fees, asserting that the removal was "clearly unjustifiable" and "wasteful." Upon remand, a court "may" order the payment of "just" costs and expenses. See 28 U.S.C. § 1447(c). The court has "broad discretion" in determining whether to award such costs and expenses. See Mints v. Educational Testing Service, 99 F.3d 1253, 1260 (3d Cir. 1996).

A finding of bad faith or improper purpose is not required to impose costs and fees on the removing party. Id.; Eyal Lior v. Sit, 913 F. Supp. 868, 878 (D.N.J. 1996). Even

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[6]Defendant does not contend otherwise. Rather, defendant asks the court to apply the legal certainty standard as defendant apparently misconstrues it and to deny plaintiffs' motion because the value of each plaintiff's claims "could conceivably exceed $75,000." Courts applying the legal certainty standard require a removing defendant to prove to a legal certainty that the plaintiff's claims are not less than the jurisdictional amount. See Garcia, 910 F. Supp. at 165 (under legal certainty standard "a removing defendant must prove 'to a legal certainty' that the plaintiff's claims are not less than the jurisdictional minimum"); Neff, 163 F.R.D. at 481 (under legal certainty standard "the defendant must prove 'to a legal certainty' that the plaintiff's claims are not less than the federal amount in controversy").

after the 1988 amendment of § 1447(c), however, courts have considered whether the removing party acted in bad faith, frivolously or without any plausible or colorable basis in exercising their discretion to award or deny costs and fees. See Mints, 99 F.3d at 1261 (affirming award of costs and fees where removal was "frivolous" and undertaken with "no colorable basis"); Moorco Intern. v. Elsay Bailey Process Automation, 881 F. Supp. 1000, 1007 (E.D. Pa. 1995) (denying costs and fees where removal not "frivolous" or in "bad faith"). See also Landmark Corp. v. Apogee Coal Co., 945 F. Supp. 932, 940 (S.D. W.Va. 1996); Nichols v. Southeast Health Plan of Alabama, Inc., 859 F. Supp. 553, 559 (S.D. Ala. 1993); Dollar v. General Motors Corp., 814 F. Supp. 538, 544-45 (E.D. Tex. 1993); Creekmore v. Food Lion, Inc., 797 F. Supp. 505, 511 (E.D. Va. 1992); Lewis v. Travelers Inc. Co., 749 F. Supp. 556, 558 (S.D.N.Y. 1990).

The court concludes that defendant’s notice of removal was not so implausible, insubstantial or frivolous as to warrant the imposition of costs and attorney fees.

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O R D E R

AND NOW, this day of October, 1999, upon consideration of plaintiffs' Motion to Remand and defendant's response thereto, consistent with the accompanying memorandum, IT IS HEREBY ORDERED that said Motion is GRANTED in that the above action is REMANDED to the Court of Common Pleas of Philadelphia pursuant to 28 U.S.C. § 1447(c); and, plaintiffs' request for costs and attorney fees is DENIED.

BY THE COURT:

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JAY C. WALDMAN, J.